



Federal Communications Commission  
Washington, D.C. 20554

**DA 07-4714**

**Release Date: November 21, 2007**

Howard F. Jaeckel, Esq.  
CBS Broadcasting, Inc.  
1515 Broadway  
New York, New York 10036

Re: Application for Renewal of License  
Station KUTV(TV), Salt Lake City, Utah  
File No. BRCT-20060601ASL  
Facility ID No. 35823

**Objectors and Counsel:**

On August 28, 2006, Andrea Gutton and Sharilee Guest ("Objectors") filed identical pleadings styled as formal petitions to deny ("Objections") opposing the license renewal application for Station KUTV(TV), Salt Lake City, Utah, licensed to KUTV Holdings, Inc. ("KUTV"), a wholly owned subsidiary of CBS Broadcasting, Inc. ("CBS").<sup>1</sup> CBS filed an opposition on January 9, 2007. For the reasons set forth below, we will deny the Objections and grant the license renewal application.

*Background.* The Objectors stated that station KUTV(TV) has violated community standards of decency, citing as an example the March 15, 2006, *Notice of Apparent Liability for Forfeiture* ("NAL") issued against all CBS owned-and-operated and affiliated stations that aired the December 31, 2004, episode of the program "Without a Trace."<sup>2</sup> The Objectors stated that airing this program and filing suit to challenge the Commission's indecency prohibition indicate that the station has not acted in the public interest and lacks the character qualifications to be a Commission licensee. They further stated that CBS violated the terms of the November 23, 2004 Consent Decree between Viacom, its parent, and the Commission,<sup>3</sup> which required it "to immediately suspend all employees materially participating in the decision to air indecent programming, and launch an internal investigation upon the issuance of a Notice of Apparent Liability for violation of indecency law."<sup>4</sup> They contended that "CBS and this station have made

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<sup>1</sup> The Objectors did not serve the licensee, or otherwise provide a return address on the petition. We will exercise our discretion pursuant to section 73.3587 of the Commission's rules, however, and consider the filing as an informal objection. 47 C.F.R. §73.3587.

<sup>2</sup> *In the Matter of Complaints Against Various Television Licensees Concerning Their December 31, 2004, Broadcast of the Program "Without a Trace," Notice of Apparent Liability for Forfeiture*, 21 FCC Rcd 2732 (2006).

<sup>3</sup> *Viacom, Inc. et al*, Order, 19 FCC Rcd 23100 (2004) ("2004 Consent Decree"), *pet. for recon. denied*, 12 FCC Rcd 12223 (2006).

<sup>4</sup> *Objections*, at 3.

no announcement regarding the suspension of personnel, and investigation, or any other unmet condition of this Consent Decree.”<sup>5</sup>

In response, CBS argued that it is contesting the March 15, 2006, *NAL*, and thus there is “no ultimate determination by the Commission that CBS has committed *any* violation of the FCC’s rules.”<sup>6</sup> CBS further contended that, even were there to be such a finding, it would not “be of a character warranting the denial of the license renewal.”<sup>7</sup> The scene at issue, according to CBS, “lasted less than a minute and involved no nudity or simulated sexual acts of a graphic nature.”<sup>8</sup> With respect to whether its actions violated the *2004 Consent Decree*, CBS stated that it had reached a “considered conclusion that it had presented nothing indecent and that none of its employees had done anything wrong.”<sup>9</sup> According to CBS, to deny renewal based on violation of the *2004 Consent Decree*, given these facts, would be “patently frivolous.”<sup>10</sup>

The Commission and CBS have negotiated the terms of a new Consent Decree attached to the instant letter concerning CBS’s compliance with the conditions set forth in the *2004 Consent Decree*. As part of the attached Consent Decree, CBS acknowledges that it inadvertently failed to comply with the remedial steps specified in Paragraph IV(8)(f) of the *2004 Consent Decree* as contemplated by the FCC following issuance of the March 15, 2006 Notice of Apparent Liability, understands the Consent Decree’s terms, and has taken steps to ensure the additional oversights do not occur in the future.

Section 309(k)(1) of the Communications Act of 1934 (the “Act”) states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of this Act or the rules or regulations of the Commission which, taken together, would constitute a pattern of abuse.<sup>11</sup> With respect to whether grant will serve the public interest, the Commission will designate a hearing pursuant to Section 309(d)(1) of the Act if (a) the petitioner provides specific allegations of fact sufficient to show that such a grant would be *prima facie* inconsistent with the public interest;<sup>12</sup> and (b) the allegations, taken together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest.<sup>13</sup> We find that the Objectors have failed to demonstrate that the licensee of station KUTV(TV) has committed serious violations of the Communications Act or Commission rules during the

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<sup>5</sup> *Id.*

<sup>6</sup> *CBS Opposition*, at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 2, note 4.

<sup>10</sup> *Id.*

<sup>11</sup> 47 U.S.C. §309(k)(1).

<sup>12</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (“*Astroline*”).

<sup>13</sup> *Astroline*, 857 F.2d at 1561.

previous license term, or has otherwise engaged in a pattern of abuse. We further find that the Objectors have failed to raise a substantial and material question of fact as to whether grant of the instant license renewal application would violate the public interest.

*Discussion.* We find that the Objectors have failed to demonstrate that the licensee of Station KUTV(TV) has committed serious violations of the Communications Act or Commission rules during the previous license term, or has otherwise engaged in a pattern of abuse. We further find that the Objectors have failed to raise a substantial and material question of fact as to whether grant of the instant license renewal applications would violate the public interest.

CBS programming aired prior to the November 23, 2004, cannot be considered in determining whether grant of the instant license renewal application would comply with section 309(k)(1) of the Act as the Commission has agreed not to use the facts of the *2004 Consent Decree*, the forfeiture orders, the pending inquiries or complaints, "or any similar complaints" regarding programming aired before the Consent Decree's effective date for any purpose relating to Viacom or its stations, and to treat all such matters as null and void.<sup>14</sup> With respect to KUTV's character qualifications, the Commission concluded in the *2004 Consent Decree* that, with respect to material aired before November 23, 2004, there were "no substantial and material questions of fact....as to whether Viacom possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations."<sup>15</sup> The Commission has upheld both of these determinations upon reconsideration.<sup>16</sup>

The Objectors cited an excerpt from the episode of "Without a Trace" that resulted in the March 2006 *NAL*. Section 504(c) of the Act prohibits reliance on the mere issuance of the *NAL* to demonstrate that grant of the license renewal application would be inconsistent with 309(k)(1) of the Act.<sup>17</sup> The Commission has thus stated that it will "not penalize someone for challenging the *NAL* rather than paying it...but will look only to the facts underlying prior *NAL*s to determine whether the person is engaging in a pattern of non-compliant behavior."<sup>18</sup> Based on the limited showing provided by the Objectors, we cannot find that the apparent violation justifies denial or designation of the license renewal application, or that it demonstrates a pattern of non-compliant behavior. The fact that local municipalities have requested "family-friendly and child-appropriate [programming] standards" does not provide a sufficient basis to find that CBS's current programming generally meets the legal definition of indecency.<sup>19</sup> Furthermore, we conclude that CBS possesses the basic qualifications to hold an FCC license notwithstanding its airing of "Without a Trace" following the November 23, 2004 Consent Decree.

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<sup>14</sup> *2004 Consent Decree*, 19 FCC Rcd at 23106-23107, ¶ 10.

<sup>15</sup> *Id* at 23103, ¶ 4.

<sup>16</sup> *2004 Consent Decree*, Order on Reconsideration 12 FCC Rcd at 12226-12227.

<sup>17</sup> 47 U.S.C. § 504(c) (generally prohibiting use of a Notice of Apparent Liability for Forfeiture that has neither been paid nor finally adjudicated in another proceeding to the detriment of the person to whom the notice was issued).

<sup>18</sup> *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules to Incorporate the Forfeiture Guidelines*, 15 FCC Rcd 303, 304 ¶ 3 (1999).

<sup>19</sup> *Objections*, at 2.

With respect to whether CBS violated the specific terms of the compliance plan entered into as part of the *2004 Consent Decree*, the Commission and CBS have negotiated the terms of a new Consent Decree attached to the instant letter that resolves the issues raised by the Objectors. Based on our review of the record, we conclude that the Consent Decree contains appropriate terms and conditions addressing the issues raised by the Objectors surrounding noncompliance with the *2004 Consent Decree* and that CBS has the basic qualifications to be a Commission licensee. Therefore, we conclude that there are no substantial and material questions of fact at issue and that grant of the instant license renewal application, subject to the specific representations and commitments contained in the Consent Decree, would comply with Section 309(k) of the Act.

Accordingly, the informal objections filed by Andrea Gutton and Sharilee Guest **ARE DENIED. IT IS FURTHER ORDERED** that the application (File No. BRCT-20060601ASL) of KUTV Holdings, Inc., for renewal of license for station KUTV(TV), Salt Lake City, Utah, **IS GRANTED.**

Sincerely,

Monica Shah Desai  
Chief, Media Bureau